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ABSTRACT

Designed for educators, this guide provides an overview of Section 504 of the Rehabilitation Act of 1973, compares and contrasts Section 504 with the requirements of the federal special education statute of the Individuals with Disabilities Education Act (IDEA) and the Americans with Disabilities Act, and discusses how powerful Section 504 is as a civil rights law protecting the rights of students with disabilities. The guide begins by discussing eligibility for Section 504 protections, the evaluation process, services, and parental notices. A flow chart comparing Section 504 with IDEA is provided, along with a chart comparing the major provisions of IDEA, Section 504, and ADA. Answers to commonly asked questions about Section 504 are then provided that address eligibility, accommodations, services, and disciplinary requirements. Extensive appendices include explanations of 504 provisions relating to definitions and discrimination, a sample Section 504 policy statement, procedural safeguards under Section 504, a Section 504 checklist, parental rights under Section 504, classroom and facility accommodations, a sample procedures checklist, a sample referral for 504 assistance, a sample notice of conference, a sample form to determine 504 eligibility, a sample section 504 accommodation plan form, and the Office for Civil Rights regional locations. (CR)

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SECTION 504 AND THE ADA

PROMOTING STUDENT ACCESS

A RESOURCE GUIDE FOR EDUCATORS

SECOND EDITION

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Permission is granted for use or adaptation of any material in this appendix to support student access to educational materials.

Background and Overview

Section 504 of the Rehabilitation Act has been a federal law since 1973. For many years its main thrust has been in the area of employment for individuals with disabilities. However, within the last decade, the Office for Civil Rights (OCR), charged with enforcement of Section 504, has become pro-active in the field of education of individuals with disabilities. Advocacy organizations and the legal system have increasingly focused on Section 504's requirement to insure the education system provides the full range of special accommodations and services necessary for students with special needs to participate in and benefit from public education programs and activities. The information in this "Resource Guide" focuses upon the instruction issues of Section 504 (Subpart D), and not upon employment practices.

Regulations for the Americans with Disabilities Act (ADA) took effect on January 26, 1992. This legislation and the regulations, as per the public schools (Title II), are limited legally to reinforcing Section 504. Court decisions arising under the ADA in the public school setting have not had a major impact to date. These regulations are very broadly written, as they are intended to cover a wide range of public entities. There is no reference , for example, that requires districts to offer a free appropriate public education (FAPE) to students with disabilities. Even so, the ADA is being interpreted by OCR as incorporating all Section 504 protections. It is critical to note that the application of the ADA does not hinge on the receipt of federal funds as Section 504 does. By eliminating this prerequisite the ADA greatly expands the degree to which federal law prohibits discrimination on the basis of a disability. The scope of this non-discrimination mandate cannot be overstated; every action taken by public schools must be evaluated for consistency with the ADA. As an aid to understanding the relationship of the ADA to Section 504 and the Individuals with Disabilities Education Act (IDEA), the reader will find that an overview of the ADA is included in the comparison chart. This chart is designed to present a brief description of Section 504 through a comparison to comparable components of the IDEA and the ADA.

Section 504/ADA prohibits discrimination against persons with disabilities, including both students and staff members, by school districts receiving federal financial assistance. This includes all programs or activities of the school district receiving federal funds, regardless of whether the specific program or activity involved is a direct recipient of federal funds. Included in the U.S. Department of Education regulations for Section 504 is the requirement that students with disabilities be provided with a free appropriate public education (FAPE). These regulations require identification, evaluation, provision of appropriate services, and procedural safeguards in every public school in the United States. However, many schools remain unclear in their understanding of this powerful law and are limited in their capacity to fully implement its requirements.

All individuals who are disabled under the Individuals with Disabilities Education Act (IDEA) are also considered to be disabled and therefore protected, under Section 504/ADA. However, all individuals who have been determined to be disabled under Section 504 may not be disabled under IDEA. These children require a response from the regular education staff and curriculum. With respect to most students with disabilities, many aspects of the Section 504 regulation concerning FAPE parallel the requirements of the Individuals with Disabilities Education Act (formerly the Education

of All Handicapped Children Act) and state law. In those areas, by fulfilling responsibilities under the IDEA and state law, a district is also meeting the requirements of the Section 504 regulations.

However, in some other respects the requirements of the laws are different. There are some students who are not eligible for IDEA services but who nevertheless are deemed disabled under Section 504, and to whom a district will therefore have responsibilities.

Eligibility Issues

The IDEA defines as eligible only students who have certain specified types of disabilities and who, because of one of those conditions, need special education (specially designed instruction). Section 504, on the other hand, protects all qualified students with disabilities, defined as those having any physical or mental impairment that substantially limits one or more major life activities (including learning). Section 504 covers all students who meet this definition, even if they do not fall within the IDEA enumerated categories and even if they do not need to be in a special education program.

An example of a student who is protected by Section 504, but who may not be covered by the IDEA, is one who has juvenile arthritis but who is not eligible for special education and related services through IDEA. Such a student has a health impairment but may not be covered by the IDEA if he is not eligible to receive specially designed instruction (special education). However, the student may be disabled for purposes of Section 504 if he/she is substantially limited in the performance of a major life activity. A similar example might be a student with acquired immune deficiency syndrome (AIDS). Students with attention deficit disorder (ADD) or emotional/behavioral difficulties provide other examples. Such students may not meet the criteria for IDEA categories such as learning disabled, other health impaired, or emotionally disturbed. However, if their disorders or conditions substantially limit their ability to perform a major life activity, they are disabled within the meaning of Section 504 and must be provided with the accommodations and special services necessary.

If a district has reason to believe that, because of a disability as defined under Section 504, a student needs either special accommodations or related services in the regular setting in order to participate in the school program, the district must evaluate the student; if the student is determined to be disabled under Section 504, the district must develop and implement a plan for the delivery of all needed services. Again, these steps must be taken even though the student is not covered by the IDEA special education provisions and procedures.

Evaluation Process

What is required for the Section 504 evaluation and placement process is determined by the type of disability believed to be present, and the type of services the student may need. The evaluation must be sufficient to accurately and completely assess the nature and extent of the disability, and the recommended services. Evaluations more limited than a full special education evaluation may be adequate in some circumstances. For example, in the case of the student with juvenile arthritis, the evaluation might consist of the school nurse meeting with the parent and reviewing the

student's current medical records. In the cases of students with ADD, current psycho-educational evaluations may be used in combination with appropriate medical information if such evaluation assessed the ADD issue. In other cases, additional testing may be necessary.

Services

The determination of what services are needed must be made by a group of persons knowledgeable about the student. The group should review the nature of the disability, how it affects the student's education, whether specialized services are needed, and if so what those services are. The decisions about Section 504 eligibility and services must be documented in the student's file and reviewed periodically.

For the student with juvenile arthritis, Section 504 services might be the provision of a typing course and use of a typewriter/word processor to improve writing speed or to provide a less painful means of writing. For the student with AIDS, Section 504 services might be the administration and monitoring of medication, or a class schedule modified to address the student's stamina. For a student with ADD, services might include modification in the regular classroom, special assistance from an aide, a behavior plan, counseling, and/or the monitoring of medication.

Notice

It should also be noted that, under Section 504, the parent or guardian must be provided with notice of actions affecting the identification, evaluation, or placement of the student . They are entitled to an impartial hearing if they disagree with district decisions in these areas. For disabilities covered only by Section 504 and not the IDEA, a Section 504 hearing will have to be made available.

Summary

It is important to keep in mind that some students who have physical or mental conditions that limit their ability to access and participate in the education program are entitled to rights (protection) under Section 504/ADA even though they may not fall into IDEA categories and may not be covered by that law.

It is also important to realize that Section 504/ADA is not an aspect of "special education." Rather, it is a civil rights law and therefore is the responsibility of the comprehensive general public education system. As such, building administrators and superintendents of schools are responsible for its implementation within districts. Special education administrators are participants but are not ultimately the responsible LEA administrators. Also IDEA funds may not be used for the expressed purpose of meeting only Section 504 requirements.

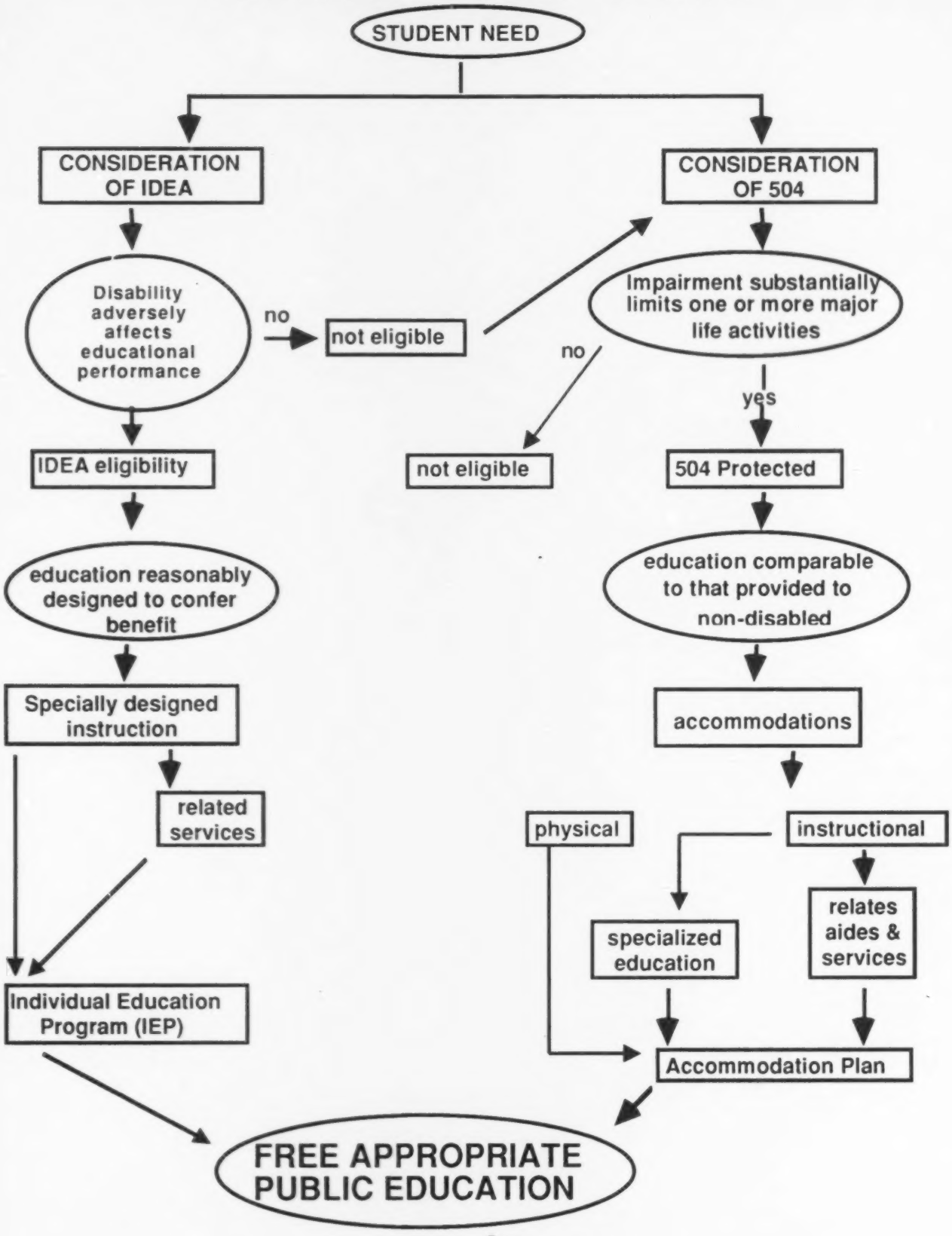
Audience

The Council of Administrators of Special Education (CASE) has organized and developed this information from various existing documents as a resource for school personnel nationally. We hope it serves to provide an increased understanding of the parameters of Section 504; how it compares and contrasts with the requirements of the federal special education statute IDEA and the Americans with Disabilities Act (ADA);

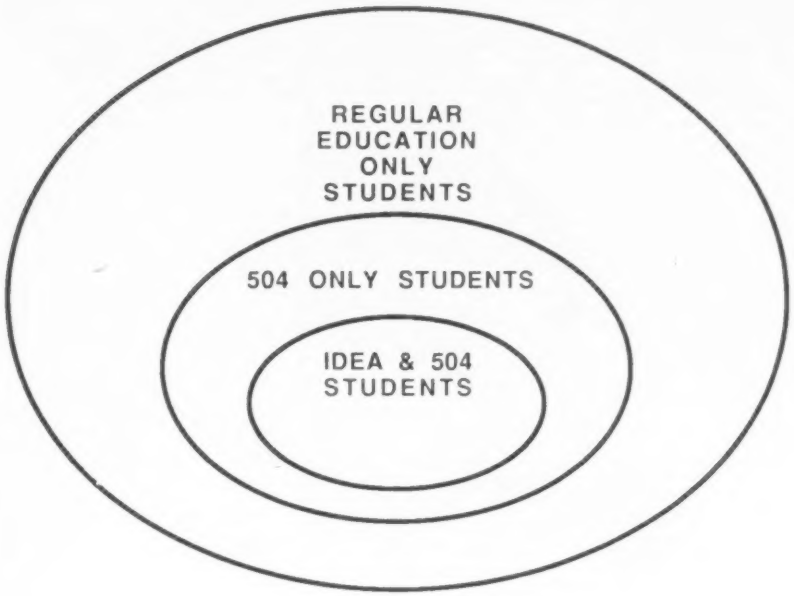
and how powerful Section 504 is as a civil rights law protecting the rights of the "qualified individuals (students) with disabilities in the United States" to be provided with full participation in and benefits from "any (education) program or activity."

This information is provided with the understanding that it is not intended to provide legal advice either expressed or implied. Information is specific to the federal legislation referenced; additional requirements that may exist within certain state regulations are not addressed. We hope this information will be of help to you. For further information, contact your local State Department of Education, or the U.S. Department of Education, Office of Special Education Programs (OSEP), or the Office for Civil Rights (OCR).

IDEA/504 FLOW CHART



STUDENT POPULATION



IDEA/504 STUDENTS

Students are qualified under one or more specifically defined IDEA disabling conditions. Specially designed Individual Education Programs are planned for each student by IEP Teams.

SECTION 504 STUDENTS ONLY

Due to substantial mental or physical impairments that limit one or more of the student's major life activities, appropriate accommodations to the student's program are required in order to prevent discrimination due to the disability. A 504 accommodation plan is designed for each student according to individual need. Examples of potential 504 disability conditions not typically covered under IDEA are:

-communicable diseases – HIV, Tuberculosis
-medical conditions – asthma, allergies, diabetes, heart disease
-temporary medical conditions due to illness or accident
-Attention Deficit Disorder (ADD, ADHA)
-behavioral difficulties, including school phobia
-drug/alcohol addiction
-other conditions

IDEA, Section 504 and ADA
A Comparison

IDEA	Section 504 of the Rehabilitation Act	The Americans with Disabilities Act
	Year Enacted	
1975	1973	1990
	Legal Citation	
20 USC 1400 et seq. 34 CFR Part 300	29 USC 794 34 CFR Part 104	42 USC 12134 28 CFR Part 35
	General Purpose	
A Federal funding statue whose purpose is to provide financial aid to states in their efforts to ensure adequate and appropriate educational services for children with disabilities.	A broad civil rights law which protects the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education.	A broader civil rights statute than 504 extending protections to individuals with disabilities in private industry employing more than 15 individuals, public entities, public accommodations, telecommunications and private nonsectarian schools.
	Who is covered?	
Infants and toddlers with disabilities 0-2; children 3-21 who meet the definition of one of the specific disabilities applicable to school age children.	Identifies children that have a disability who meet the definition. The child (1) has or (2) has had a physical or mental impairment which substantially limits a major life activity or (3) is regarded by others as disabled. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself and performing manual tasks. The disability need only substantially limit one major life activity in order for the student to be eligible.	Any person with a physical/mental impairment which substantially limits one or more major life activities such as self care, manual tasks, walking, seeing, hearing, breathing, learning/working, has a record of such an impairment, or is regarded as having such an impairment.
	Funding	
Provides additional funding for eligible students.	Does not provide additional funds. IDEA funds may not be used to serve children eligible only under Section 504.	Does not provide additional funds.
	Program Access	
Each public agency shall take steps to provide academic and nonacademic services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities (34 CFR 300.306).	Rule: No qualified individual with a disability shall, because a recipient's facilities are inaccessible or unusable by disabled individuals, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity. Does not require recipients to make each of the existing facilities or every part of an existing facility accessible. (1) the program may redesign equipment (2) reassign classes to accessible buildings (3) assign an aid, etc. With priority to those methods that offer programs and activities to disabled persons in the most integrated setting appropriate. New construction or alterations after June 3, 1977 must be accessible.	Rule: No qualified individual with a disability shall, because a public entity's facilities are inaccessible or unusable by individuals with disabilities, be denied the benefits of its services, programs or activities or be subjected to discrimination. EXCEPT: • Does not necessarily require a public entity to make each of its existing facilities accessible to individuals with disabilities (same rule as 504 applies). Does not require the public entity to fundamentally alter the nature of the service, program or activity or incur an undue financial and administrative burden. However, this does not relieve the public entity from providing access to individuals with disabilities through other means. New construction or alterations after January 26, 1992 must be accessible.

IDEA	Section 504 of the Rehabilitation Act	The Americans with Disabilities Act
Procedural Safeguards		
Requires notice to the parent or guardian with respect to identification, evaluation and/or placement. IDEA procedures will suffice for Section 504 implementation. • Requires written notice. • Delineates required components of written notice. • Requires written notice prior to any change in placement.	Requires notice to the parent or guardian with respect to identification, evaluation and/or placement. IDEA procedures will suffice for Section 504 implementation. • Written notice not required, but indicated by good professional practice. • Requires notice only before a "significant change" in placement.	None
Responsibility to Provide a Free and Appropriate Public Education (FAPE)		
Requires the provision of a free and appropriate public education to eligible students covered under the law including specially designed instruction. • Requires a written IEP document with specific content and a required number of specific participants at the IEP meeting. • "Appropriate education" means a program designed to provide "educational benefit." • Related services are provided if required for the student to benefit from specially designed instruction.	Requires the provision of a free and appropriate public education to eligible students covered under the law including specially designed instruction. The Individual Education Program (IEP) of IDEA will suffice for Section 504 plan. • Does not require a written document but does require a plan. A written plan is indicated by good professional practice. It is recommended that the district document that a group of persons knowledgeable about the student convened and specified the agreed upon services. • "Appropriate education" means an education comparable to the education provided to non-disabled students, requiring that accommodations be made. • Related services, independent of any special education services as defined under IDEA, may be the accommodations.	None
LRE		
The placement of students with disabilities in special classes, separate schools or other removal from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. In addition, the placement must provide special education, to the maximum extent appropriate to the needs of the student, with other students who do not have a disability and be as close as possible to the student's home.	The student shall be placed in the regular educational environment unless the child's education cannot be achieved satisfactorily even with the use of supplementary aids and services.	None
Multidisciplinary Team		
Defines specific membership of the team.	Group of individuals knowledgeable about the student, evaluations and placement options develop an accommodation plan.	

IDEA	Section 504 of the Rehabilitation Act	The Americans with Disabilities Act
Evaluation		
A full comprehensive evaluation is required, assessing all areas related to the suspected disability. The child is evaluated by a multidisciplinary team or group. Requires informed consent before an initial evaluation is conducted.	Evaluation draws on information from a variety of sources in the area of concern; decisions made by a group knowledgeable about the student, evaluation data, and placement options. Requires notice; at least one regional OCR office has advised that consent is also required.	None
Reevaluation		
Reevaluation considered at least every 3 years. A reevaluation is not required before a significant change in placement, but a review of current data is recommended. Provides for independent educational evaluation at district expense if parent disagrees with evaluation obtained by school and hearing officer concurs. Informed parent consent is required for reevaluation, unless school can show parent did not respond to attempts made.	Requires periodic reevaluations. IDEA schedule for reevaluation will suffice. Reevaluation is required before a significant change in placement. No provision for independent evaluations at district expense. District should consider any such evaluations presented.	None
Placement Procedures		
When interpreting evaluation data and making placement decisions, the law requires: • Draw upon information from a variety of sources. • Assure that all information is documented and considered. • Ensure that the eligibility decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data and placement options. • Ensure that the student is educated with his/her non-disabled peers to the maximum extent appropriate (least restrictive environment). • An IEP review meeting is required before any change in placement.	When interpreting evaluation data and making placement decisions, the law requires: • Draw upon information from a variety of sources. • Assure that all information is documented and considered. • Ensure that the eligibility decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data and placement options. • Ensure that the student is educated with his/her non-disabled peers to the maximum extent appropriate (least restrictive environment) • A meeting is not required for any change in placement.	
Undue Hardship		
	Size of the program and its budget, type of operation, nature and cost of accommodation.	Size of the business and its budget, type of operation, nature and cost of accommodation.
Drug and Alcohol Use		
	Schools may take disciplinary action pertaining to use or possession of illegal drugs or alcohol against any student to the same extent such disciplinary action is taken against students who are not disabled. Due process protections at 34 CFR 104.36 do not apply.	Current drug use is not considered a disability. Current alcohol abuse that prevents individuals from performing duties of the job or that constitutes direct threat to property or safety of others is not considered a disability.

IDEA	Section 504 of the Rehabilitation Act	The Americans with Disabilities Act
	Contagious Diseases	
	Individuals with disabilities excludes any individuals with a contagious disease which renders the individual unable to perform a job.	Permits qualification standards requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of others.
	Protection Against Retaliation	
Civil Rights protections under Section 504 apply.	Incorporates prohibition against retaliation, intimidation, coercion, threats and discrimination found in regulations under Title VI of Civil Rights Act.	Extends protections to non-disabled individuals who have testified or participated in any manner in an investigation, proceeding or hearing under ADA.
	Self Evaluation	
	Requires recipients to conduct a self-evaluation to identify discriminatory policies and practices.	By January 26, 1993, school districts were required to update their Section 504 self-evaluation to assure compliance with the ADA which must involve constituent groups.
	Internal Grievance Procedure	
State complaint procedures required (34 CFR 300.660)	Requires districts with 15 or more employees to designate a Section 504 compliance officer and a grievance procedure to investigate complaints alleging noncompliance with Section 504.	Requires public entities with more than 50 employees to designate a compliance officer and a grievance procedure to investigate complaints alleging noncompliance with ADA.
	Discipline	
Any disciplinary removal of more than 10 consecutive days is a significant change of placement triggering the procedural safeguards of IDEA, including the right to remain in the current educational placement pending appeals. Cumulative removals of more than 10 school days within the school year may be considered as a change of placement and thus trigger the procedural safeguards under IDEA. Cannot terminate FAPE as a disciplinary measure.	District must reevaluate the child prior to any disciplinary removal for more than10 days. Is there nexus between the child's disability and the behavior complained of? If "yes", the child may not be removed for more than 10 consecutive school days unless the behavior is drug/alcohol related. No automatic right to remain in current educational placement. Right to FAPE may cease due to a disciplinary action.	Amends 504 – to create exception for disciple of drug and alcohol related behavior.
	Due Process	
Requires districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation or placement of a student. Delineates specific requirements.	Requires districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation of placement of a student. Requires that the parent have an opportunity to participate and be represented by counsel. Other details are left to the discretion of the local school district. Policy statements should clarify specific details.	

IDEA	Section 504 of the Rehabilitation Act	The Americans with Disabilities Act
Exhaustion		
Requires the parent or guardian to pursue administrative hearing before seeking redress in the courts.	Administrative hearing not required prior to OCR involvement or court action; compensatory damages possible.	
Compliance/Enforcement		
Enforced by the U.S. Office of Special Education Programs. • Compliance is monitored by the State Department of Education and the Office of Special Education Programs. • The State Department of Education resolves complaints. • Non-compliance may result in loss of IDEA funds and state aid.	Enforced by the U.S. Office for Civil Rights, United States Department of Education (OCR). • State Department of Education has no monitoring, complaint resolution or funding involvement. • Non-compliance may result in loss of all federal funds.	Enforced by the U.S. Office for Civil Rights, United States Department of Education (OCR). • State Department of Education has no monitoring, complaint resolution or funding involvement. • Non-compliance may result in loss of all federal funds.

Questions and Answers

Should the Director of Special Education in a district also be named as the 504 Coordinator and the ADA Coordinator?
Maybe, but there are several issues that must be considered. For example, if the Special Education Director's salary is paid totally from IDEA funds, assignment of these other responsibilities would mean that a portion of his/her time is being assigned to activities that are not eligible for IDEA expenditures. On the other hand, the Director of Special Education is likely the person who has the most training and is the most sensitive to disability issues. Even so, this person may not be very knowledgeable of or involved in employment , building accessibility and personnel issues; these are major areas of concern under the ADA. At best, the decisions regarding these job assignments should take into consideration the organization structure of the district and other staff assignments.

Just what is the difference between Section 504 and the ADA?
It has been said that the Americans With Disabilities Act extends the protections of Section 504 into the public sector. Refer to the IDEA, Section 504 and the ADA Comparison Chart on page five of this document for more information.

If a child has been diagnosed with Attention Deficit Disorder, and found to be ineligible for services under IDEA, is that child automatically eligible for protection from discrimination under Section 504?
Neither IDEA nor Section 504 allow for "automatic" eligibility. One might assume that the child was not eligible under IDEA because he/she did not require specially designed instruction in order to receive FAPE (no evidence of adverse effect on educational performance). The question under Section 504 is whether the identified disability (ADD) results in a substantial limitation in a major life activity. Given this framework, it is indeed possible that students with a diagnosis of ADD will be treated differently, as all decisions must be made on an individual student basis. Section 504 eligibility is not automatically given to a student who is referred for a special education (IDEA) evaluation and who is subsequently determined not to be IDEA-eligible.

When a child is released from special education under IDEA, do we have to continue services under a 504 Plan because the child "has a record of such an impairment"?
No. Consideration should be given for 504 eligibility for protection from discrimination, but eligibility is not a foregone conclusion. Eligibility procedures must still be implemented and the following question must still be answered in the affirmative, "Does the child have a disability that substantially limits a major life activity?" Review the Senior Staff Memo at 19 IDELR 894 (OCR 1992) for more information.

How should a district implement the phrase "is regarded as having such impairment"? Do we write a 504 Plan because someone thinks the child has a disability?
No. These "regarded as" claims usually arise most frequently in issues of employment, and rarely in connection with elementary or secondary education. An OCR memo to Senior Staff, 19 IDELR 894 (OCR 1992) explains that this portion of the law is intended as a remedy for individuals who are not disabled, but have experienced negative

actions (discrimination) taken against them. The individual actually has no disability, therefore there could be no other basis for protection from discrimination.

If a child is eligible under IDEA, but the parent wants a Section 504 plan instead of an IEP, must the district comply?
No. A rejection by the parent of the services available under IDEA amounts to a rejection of services under Section 504. OCR has stated in *Letter to McKethan*, 25 IDELR 295 (OCR, 1996) that it is impermissible for a student's parent to refuse to accept IDEA services and require the district to develop an IEP under Section 504.

Do parents with disabilities have a right to accommodations even though their child does not have a disability?
Yes, when accommodations are needed in order for them to participate in essential components of their child's educational program. For example, an interpreter might be needed during the awards night program when their child is receiving an award. Be aware that such services cannot be afforded through IDEA funds.

Is every student with an IEP (eligible under IDEA) also eligible for protection under Section 504?
Yes. As stated, OCR cannot conceive of any situation in which IDEA-eligible children would not also be entitled to the protection extended by Section 504 (*Letter to Veir*, 20 IDELR 864; OCR 1993). This does not mean that a Section 504 Plan should be developed in addition to the Individual Education Program (IEP). Due process rights and protections under IDEA are designed to prevent discrimination due to a disability.

Is there a transition requirement under Section 504?
No. There is a transition requirement under the IDEA, but not under Section 504.. However, it is strongly advised that a transition conference be held for all students with disabilities prior to graduating from high school. Of course, students with disabilities served under the IDEA must have a conference to finalize transition services. Those students only protected under Section 504 do need, at a minimum, the documentation of their disability and the accommodations that have been provided to them in their secondary setting. It is advised that all schools inform students with disabilities that they may be eligible for protections under Section 504 and the ADA.

In a landmark case (*Yankton School District v. Schramm*, 23 IDELR 42, D.S.D. 1995), the school district attempted to declassify a special education high school student with cerebral palsy, claiming that she no longer needed special education services under IDEA in order to complete her secondary education; any services that were required fell under Section 504 only. The parents argued that if the court found the special services fall under Section 504 only, their daughter would not be entitled to receive the transition services she needed to promote success in a post secondary educational setting. The 8th Circuit found that the services not included in the student's last IEP did constitute special education, and stated, "without these specially designed instruction and related services, the student's ability to learn and perform in school would be adversely affected by her orthopedic impairment." A lesson for school districts: if you are going to go through with the declassification, you should strongly consider the inclusion of transition services in a proposed Section 504 plan.

What disciplinary requirements exist in Section 504?

Section 504/ADA provides civil rights protections. Denial of access, and/or a significant change in placement, should not occur when there is a definable nexus or relationship between the misconduct and the disability. Negative action must not be taken against a student for misconduct that is a product of the disability. The student's 504 team should meet and make this decision. A reevaluation should be conducted prior to any significant change in placement.

Section 512(a) of the ADA amended Section 504 to allow schools to take disciplinary action against students with disabilities to the same extent as it would take action against non-disabled students in areas pertaining to the use or possession of illegal drugs or alcohol. Under this language, OCR has issued policy guidance which recognizes that students who are disabled by drug addiction or alcoholism may be disciplined to the same extent as other students, but that a student who is disabled by some other condition in addition to drug addiction or alcoholism must be evaluated and afforded due process prior to disciplinary action that would constitute a significant change in placement.

There is no requirement in Section 504 for the continuation of FAPE following the expulsion of a student. However, school districts should be aware of specific state regulations which may address the continuation of services for any student who may be denied attendance at a public school site due to disciplinary infractions.

How should a local school district operationalize the concept of "substantially limits"?

The phrase "substantially limits" is possibly the most critical part of the Section 504 eligibility process, and the most misunderstood. Without specific clarification it can be one of the most subjectively implemented components of the eligibility determination. The actual presence of an identified disability is not sufficient, in and of itself, to qualify a student as eligible for protection under Section 504. Just as "adverse effect on educational performance" must be proven under IDEA, so must there be clear evidence of a "substantial limitation of a major life activity" under Section 504.

It is the belief of CASE that the intent of Section 504 is NOT to have every student who may have a disability qualify for Section 504 accommodations and protections. Only when the disability results in "substantial limitation in the performance of a major life activity" should the student be protected from discrimination due to this disability.

The Americans with Disabilities Act provides some assistance in interpreting the phrase "substantially limits". In that law, the impairment or disability must be substantial and somewhat unique, rather than commonplace, when compared to the average person in the general population (Sec. 1630.2(j)(1).

Thus, for the purpose of this discussion, it is suggested that the term "substantially limits" be interpreted to mean that the student is <u>unable to perform</u> a major life activity that the average student of approximately the same age can perform, <u>or</u> that the student is <u>significantly restricted as to the condition, manner or duration under which a particular major life activity is performed as compared to the average student of approximately the same age.</u>

Dr. Perry Zirkel of Lehigh University has developed a five (5) point scale format for conceptualizing this determination of substantial limitation, and it is included below. This concept could be used by the 504 team in its determination of eligibility for protection from discrimination due to a disability.

Place an "X" on the following scale to indicate the specific degree that the impairment (in #1) limits the major life activity (in #2): For an "X" at 4.0 or above, fill in specific information evaluated by the team that justifies the rating:

5 ---------- Extremely _____

4 ---------- Substantially _____

3 ---------- Moderately _____

2 ---------- Mildly _____

1 ---------- Negligibly _____

❑ The team's determination was less than 4.0; the student is not eligible for Section 504 protections. Provide notice to parents of their procedural rights, including an impartial hearing.

OR

❑ The team's determination was a "4" or above. The team should determine and list on the 504 Accommodation Plan the specific accommodations that are necessary for the student to have an opportunity commensurate with non-disabled students of approximately the same age in this district.

What due process rights are required under Section 504?

Section 504 provides a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the individual to examine relevant records, an impartial hearing with the opportunity for participation by the individual's parents or guardian, representation by counsel, and a review procedure. Be aware that these rights are somewhat limited when compared with the procedural safeguards available under IDEA. A district may choose to use the same system of due process procedures that are in place under IDEA; however it is recommended that the pros and cons of this decision be carefully researched prior to implementation.

What are the requirements for the school district in the provision of a Section 504 hearing?

The district is responsible for choosing and providing an impartial hearing officer. The training of this hearing officer in regard to the Section 504 statute, regulations and case law should be thoroughly explored and validated by the district. It should not be assumed that an IDEA hearing officer is sufficiently knowledgeable in Section 504 issues.

Representation by counsel is a right of the parent or guardian..

The district is also responsible for development of a review process. This process is intended to validate that the decision made by the hearing officer was indeed based upon the facts presented. This is a paper review of previously submitted fact, and not a second hearing.

What criteria does the Office of Civil Rights utilize to decide to investigate a complaint when one is received?
When OCR receives a complaint, office staff will determine whether the complaint: (1) comes under its jurisdiction , i.e. the agency receives federal funds and disability discrimination is suspected; (2) is not patently frivolous; and (3) was filed within the 180 day limitation period for complaints.

What should the district do when notification of an OCR complaint is received?
When the district receives notice that a complaint has been filed for alleged discrimination against the district, talk with the assigned investigator about the common assumptions that you share: you both want to address the problem that precipitated the complaint, resolve the issue and fulfill the requirements of Section 504. Try to get the name of the complainant and the student's name, saying that you need that information to satisfactorily respond to the complaint. If the investigator refuses, you can get that information through a Freedom of Information Act request. The investigator, who is not usually a lawyer, will probably be your only contact with OCR. An OCR staff attorney will review the investigator's reports and resolution proposals.

If you feel the allegations raised can be handled on an informal front, or through a phone investigation, request an Early Complaint Resolution (ECR). Then there will be no on-site investigation, no official Letter of Finding issued, and the investigation will end. OCR (the investigator) should obtain a copy of a statement signed by the complainant that the allegations has been resolved.

If an on-site investigation occurs, attempt to ensure that the investigation does not change or multiply. Ask for a letter from the investigator describing the issues and allegations and refer to it frequently. If, following the on-site investigation you are told there are violations, consider negotiating a Corrective Action Plan in order to avoid a formal Letter of Finding. However, if you are adamant about defending the case, simply wait until OCR takes you to the administrative hearing by their procedures. You can re-open the issue of a voluntary Corrective Action Plan at any time in the process.

At all times, refrain from contacting the parent or complainant without OCR involvement, or engaging in any action that might be construed as intimidation, threats or harassment.

APPENDIX

A ---- Section 504 of the Rehabilitation Act of 1973, including Definitions

B ---- Discrimination under Section 504

C ---- Section 504 Policy Statement/LEA Samples

D ---- Procedural Safeguards/Parent Rights

E ---- Section 504 School Policy/Procedures Checklist

F ---- Parent/Student Rights in Identification, Evaluation and Placement

G ---- When School Staff Should Consider the Existence of a Disability

H ---- Classroom and Facility Accommodations

I ---- Sample 504 Student Access Procedures Checklist

J ---- Sample Referral for 504 Assistance

K ---- Sample Notice of 504 Conference

L ---- Sample 504 Eligibility Determination

M ---- Student Accommodation Plan and Information Regarding Section 504

N ---- Office For Civil Rights Regional Locations

O ---- Contacts/Resources

PERMISSION IS GRANTED FOR USE OR ADAPTATION OF ANY MATERIAL IN THIS APPENDIX TO SUPPORT STUDENT ACCESS TO EDUCATIONAL PROGRAMS.

APPENDIX A

SECTION 504 OF THE REHABILITATION ACT OF 1973

"No otherwise qualified individual with disabilities in the United States shall, solely by reason of her or his disability, as defined in section 706(8) of this title, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." (29 U.S.C. Sec.794)

DEFINITIONS

individual with a disability

..." any individual who
i) has a physical or mental impairment which substantially limits one or more of such person's major life activities,
(ii) has a record of such impairment, or
(iii) is regarded as having such an impairment."
(29 U.S.C. Sec.706(8))

physical or mental impairment

..."(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory; including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hermic and lymphatic; skin; and endrocrine; or
(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."
(34 Code of Federal Regulations Part 104.3)

major life activities

"... functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working."
(34 Code of Federal Regulations Part 104.3)

has a record of such an impairment

"... has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities."
(34 Code of Federal Regulations Part 104.3)

is regarded as having an impairment

"... (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;
(B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
(C) has none of the impairments defined but is treated by a recipient as having such an impairment."
(34 Code of Federal Regulations Part 104.3)\

APPENDIX B

DISCRIMINATION UNDER SECTION 504

Discrimination under Section 504 occurs when a recipient of federal funds:

1. Denies a person with a disability the opportunity to participate in or benefit from an aid, benefit or service which is afforded non-disabled students (e.g., district practice of refusing to allow any student on an IEP the opportunity to be on the honor roll; denial of credit to a student whose absenteeism is related to his/her disability; expelling a student for behavior related to his/her disability; refusing to dispense medication to a student who could not attend school otherwise).

2. Fails to afford the person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others (e.g., applying a policy that conditions interscholastic sports eligibility on the student's receiving passing grades in five subjects without regard to the student's disability).

3. Fails to provide to the person with a disability aids, benefits, or services that are as effective as those provided to non-disabled persons (e.g., placing a student with a hearing impairment in the front row as opposed to providing her with an interpreter). Note: "Equally effective" means equivalent as opposed to identical. Moreover, to be equally effective, an aid, benefit or service need not produce equal results; it must merely afford an equal opportunity to achieve equal results.

4. Provides different or separate aids, benefits or services unless such action is necessary to be as effective as the aids, benefits or services provided to students with disabilities(e.g., segregating students in separate classes, schools or facilities, unless necessary).

5. Aids or perpetuates discrimination by providing significant assistance to an agency, organization or person that discriminates on the basis of disability (e.g., sponsoring a student organization that excludes persons with disabilities).

6. Denies a person with a disability the opportunity to participate as a member of a planning or advisory board strictly because of his/her disability.

7. Otherwise limits the enjoyment of any right, privilege, advantage or opportunity enjoyed by others (e.g., prohibiting a person with a physical disability from using a service dog at school).

8. In determining the site or location of a facility, makes selections which effectively exclude individuals with disabilities, or denies them the benefits of, or otherwise subjects them to discrimination. In *Hendricks v. Gilhool*, EHLR 441:352 (1989), the Pennsylvania Department of Education was found to have violated this section and the IDEA by allowing students with disabilities to be located in inferior facilities, such as trailers, wings in basements and unnecessarily restrictive classrooms due to a lack of classroom space.

APPENDIX C

SECTION 504 POLICY STATEMENT

Local school districts may wish to review their existing "nondiscrimination policy" with particular emphasis on Subpart D of Section 504. In some instances, the existing policy may be sufficient. In other instances, districts may wish to revise existing policy or develop a separate statement concerning non-discrimination in educational programs. As a minimum, a local school district policy should include:

- an affirmative statement that the district does not discriminate on the basis of disability.
- reference to Section 504 of the Rehabilitation Act of 1973.
- reference to a referral/evaluation/placement process for students suspected of having a disability under Section 504.

Sample Section 504 Policy Statements

Option A

The District will identify, evaluate and provide an appropriate public education to students who are disabled within the meaning of Section 504 of the Rehabilitation Act of 1973.

Option B

It is the policy of the Board of Education to provide a free and appropriate public education to each qualified student with a disability within its jurisdiction, regardless of the nature or severity of the disability.

It is the intent of the district to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated and provided with appropriate educational services.

Option C

It is the policy of the Board of Education not to discriminate against any otherwise qualified individual with a disability, solely by reason of his/her disability, in admission or access to, or treatment or employment in, any program or activity.

It is the intent of the district to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated and provided with appropriate educational services. Students may be disabled under this policy even though they do not require services pursuant to the Individuals with Disabilities Education Act (IDEA).

Due process rights of students with disabilities and their parents under Section 504 will be enforced.

_____ is the coordinator of Section 504 activities.

APPENDIX D

PROCEDURAL SAFEGUARDS/PARENT RIGHTS

There are several times during the planning process when parents/guardians should be provided their rights under Section 504:

1. When eligibility is determined.
2. When a plan is developed.
3. Before there is a significant change in the plan for services.

Notification should include the following rights under Section 504 and FERPA:

1. Right to file a grievance with the school district over an alleged violation of Section 504 regulations.
2. Right to have an evaluation that draws on information from a variety of sources.
3. Right to be informed of any proposed actions related to eligibility and plan for services.
4. Right to examine all relevant records.
5. Right to receive all information in the parent's/guardian's native language and primary mode of communication.
6. Right to periodic re-evaluations and an evaluation before any significant change in program/service modifications.
7. Right to an impartial hearing if there is disagreement with the school district's proposed action.
8. Right to be represented by counsel in the impartial hearing process.
9. Right to appeal the impartial hearing officer's decision.

Section 504 regulations do not establish timelines for submission of a hearing request.

Section 504 regulations do not define "impartial." However, in similar processes, impartial has been defined as a person not employed by or under contract with the district in any capacity. Employees of other districts may serve as 504 Hearing Officers, however.

Section 504 regulations do not require that the selection of the hearing officer be a mutually agreed upon decision between the school district and the parents/guardians.

Section 504 Policy/Procedures Checklist
Perry A. Zirkel
1991

Does your school district provide, via policy or procedures, for:	YES	NO
1a. continuing public notice that your district does not discriminate on the basis of disability with regard to admission or access to and treatment or employment in your programs and activities?	___	___
1b. continuing internal notice (i.e., to staff and students) to the same effect? [See CFR Sec. 104.8 and 104.32(b)]	___	___
2. identification in those notices of Sec. 504 coordinator? [See 34 CFR Sec. 104.7(a) and 104.8]	___	___
3. a grievance procedure for disability discrimination complaints that:		
a) incorporates appropriate due process standards?	___	___
b) provides for the prompt and equitable resolution of those complaints? [See 34 CRF Sec. 104.7(b)]	___	___
4. reasonable accommodation for employees with disabilities, such as each of the following unless it demonstrably would impose an "undue hardship" on the operation of the program:		
a. accommodations readily accessible to and usable by persons with disabilities?	___	___
b. job restructuring and part-time or modified work schedules?	___	___
c. acquisition or modification of equipment or devices?	___	___
d. provision of readers or interpreters and other similar actions? [See 34 CFR Sec. 104.12]	___	___
5. not using employment tests or other selection criteria that tend to screen out persons with disabilities unless these criteria are demonstrably job related and unless effective alternatives are not available? [See 34 CFR Sec. 104.13(a)]	___	___
6. not making preemployment inquiries as to whether the applicant is disabled? [See 34 CFR Sec. 104.14(a)]	___	___

		YES	NO
7.	ready accessibility to persons with disabilities to each of your programs and activities when viewed in its entirety?	___	___
8.	an individualized evaluation (in the native language) for any student who is believed to (a) have a physical or mental impairment which substantially limits one or more major life activities, (b) have a record of such impairment, or (c) be regarded as having such an impairment? [See 34 CFR Sec. 104.35 and 104.3(j)]	___	___
9.	for each student meeting any of the criteria in item #8, an appropriate education, which is defined as regular or special education and related aids and services that are designed to meet his/her individual needs as adequately as the needs of non-disabled persons are met and that are based upon procedures referred to in item #10? [See 34 CFR Sec.104.33]	___	___
10.	parental notice (in the native language) of the rights to:		
	a) have an individualized evaluation (item #8)?	___	___
	b) examine relevant records?	___	___
	c) demand an impartial hearing with the opportunity to be represented by counsel?	___	___
	d) obtain a subsequent review? [See 34 CFR Sec.104.36]	___	___
11.	When there are separate classrooms for special education, that these be comparable facilities to those for general education? [See 34 CFR Sec. 104.34(c)]	___	___
12.	nonacademic and extracurricular services and activities so as to provide persons with disabilities with an equal opportunity for participation? [See 34 CFR Sec.104.37]	___	___
13.	reasonable access to your programs or activities, if any, of:		
	a) preschool education?	___	___
	b) day care?	___	___
	c) adult education? [See 34 CFR Sec. 104.38]	___	___
14.	meaningful access for parents with disabilities to school-initiated activities in addition to the academic and/or disciplinary aspects of their child's education?	___	___

Sample

PARENT/STUDENT RIGHTS IN IDENTIFICATION, EVALUATION AND PLACEMENT PURSUANT TO SECTION 504 OF THE REHABILITATION ACT

Please Keep This Explanation for Future Reference

The following is a description of the rights granted by this federal law to students with disabilities. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

You have the right to:

1. Have your child take part in, and receive benefits from public education programs without discrimination because of his/her disability.

2. Have the school district advise you of your rights under this federal law;

3. Receive notice with respect to identification, evaluation, or placement of your child;

4. Have your child receive a free appropriate public education. This includes the right to be educated with non-disabled students to the maximum extent appropriate. It also includes the right to have the school district make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities.

5. Have your child educated in facilities and receive services comparable to those provided non-disabled students;

6. Have your child receive special education and related services if s/he is found to be eligible under the Individuals with Disabilities Education Act (PL 101-476) or Section 504 of the Rehabilitation Act;

7. Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by a group of persons, including persons who know the student, the evaluation data, and placement options;

8. Have transportation provided to and from an alternative placement setting at no greater cost to you than would be incurred if the student were placed in a program operated by the district.

9. Have your child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the district;

10. Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement;

11. Obtain copies of your child's educational records at a reasonable cost unless the fee would effectively deny you access to the records;

12. Receive a response from the school district to reasonable requests for explanations and interpretations of your child's records;

13. Request amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading or otherwise in violation of the privacy rights of your child. If the school district refuses this request for amendment, it shall notify you within a reasonable time, and advise you of the right to a hearing;

14. Request mediation or an impartial due process hearing related to decisions or actions regarding your child's identification, evaluation, educational program or placement. You and the student may take part in the hearing and have an attorney represent you. Hearing requests must be made to _____.

15. File a local grievance.

The person in this district who is responsible for assuring that the district complies with Section 504 is _____

Telephone Number _____

APPENDIX G

WHEN SCHOOL STAFF SHOULD CONSIDER THE EXISTENCE OF A DISABILITY AND POSSIBLE SECTION 504 PROTECTION

* When expulsion or denial of services (e.g. transportation)is being considered for any student;
* When retention is being considered for any student;
* When a student shows a pattern of not benefiting from the instruction being provided;
* When a student returns to school after a serious illness or injury, or following a hospital placement;
* When a student is referred for evaluation but it is determined not to do an evaluation under the IDEA;
* When a student is evaluated and is found not to qualify for Special Education services under the IDEA;
* When a student is released from IDEA services;
* When a student exhibits a chronic health condition;
* When a student is identified as "at risk", exhibits the potential for dropping out of school, or returns from a juvenile detention facility;
* When substance abuse is an issue;
* When a disability of any kind is suspected.
* When the school system is considering new construction, or remodeling is being considered (issues of physical access);

CLASSROOM AND FACILITY ACCOMMODATIONS

As local districts develop policies and procedures for guiding the referral and identification of students suspected as having a disability under Section 504, it is critical that information concerning this law and its impact on local school districts be shared with principals and building-level staff. The intent of Section 504 is to "accommodate" for differences within the general education environment. For this to be accomplished, all staff must be provided with awareness activities and given specific information concerning the district's procedures for dealing with Section 504 referrals.

As individual students are identified, the classroom teacher may need specific training in the area of the identified disability (e.g., training from the school nurse on danger signs of an impending asthma attack, training from a physical therapist on correct positioning of a wheelchair-bound student at his/her desk, etc.) The following classroom/facility accommodations are presented as examples of ways in which Section 504 disabilities may be successfully accommodated within the regular education environment.

I. Communication

A. There may be a need to modify parent/student/teacher communications. For example:

-develop a daily/weekly journal
-develop parent/student/school contacts
-schedule periodic parent/teacher meetings
-provide duplicate sets of textbooks for the home
-utilize a modified grading system

B. There may be a need to modify staff communications. For example:

-identify resource staff
-network with other staff
-schedule building team meetings
-maintain on-going communication with building principal

C. There may be a need to modify school/community agency communication. For example, with parent consent:

-identify and communicate with appropriate agency personnel working with student
-assist in agency referrals
-provide appropriate carryover in the school environment

II. Organizational and Environmental Management

A. There may be a need to modify the instructional day. For example:

-allow student more time to pass in hallways
-modify class schedule
-modify the length of the instructional day

B. There may be a need to modify the classroom organization/structure. For example:

-adjust placement of student within classroom (e.g., study carrel, proximity to teacher, etc.)
-increase/decrease opportunity for movement
-determine appropriate classroom assignment (e.g., open versus structured)
-reduce external stimuli

C. There may be a need to modify the district's policies/procedures. For example:

-allow increase in number of excused absences for health reasons
-adjust transportation/parking arrangements
-approve early dismissal for service agency appointments

III. Alternative Teaching Strategies

A. There may be need to modify teaching methods. For example:

-adjust testing procedures (e.g., length of time, administer orally, tape record answers)
-individualize classroom/homework assignments
-utilize technology (computers, tape recorders, calculators, etc.)

B. There may be a need to modify materials. For example:

-utilize legible materials
-utilize materials that address the student's learning style (e.g., visual, tactile, auditory, etc.)
-adjust reading level of materials

IV. Student Precautions

A. There may be a need to modify the classroom/building climate for health purposes. For example:

-use an air purifier in classroom
-control temperature
-accommodate specific allergic reactions

B. There may be a need to modify classroom/building to accommodate equipment needs. For example:

-plan for evacuation for wheelchair-bound students
-schedule classes in accessible areas

C. There may be a need to modify building health/safety procedures. For example:

-administer medication
-apply universal precautions
-accommodate special diets

APPENDIX I

SECTION 504
SAMPLE PROCEDURES CHECKLIST

(* Includes district procedures that are optional and not required by statute)

- ❑ Situation is recognized that calls for consideration of a referral. A Section 504 Referral is completed, or referral is considered as a result of the IDEA (special education) action. Student record review is conducted.
- ❑ Parent is notified of referral (and 504 team meeting*); a statement of parent rights is sent to the parent with this notice.
- ❑ Meeting is held to discuss referral and determine need for evaluation. If it is determined that evaluation is needed, the parent will be asked to give permission. If permission is denied, review parent rights, end the meeting and contact the District 504 Coordinator. Notes of the meeting may be kept; the parent may have a copy if requested.
- ❑ If an IDEA evaluation has been conducted, it is likely that further evaluation will not be needed. In this event, a copy of the IDEA evaluation, and the parent permission for that evaluation, is added to the student's 504 file.
- ❑ When evaluation is completed, a notice is sent to the parent; a 504 team meeting is held to discuss the evaluation results and determine 504 eligibility. The team decision is documented. Notes of the meeting are kept; the parent may have a copy if requested. If the student is determined to be ineligible for 504 protections, the parent is notified and the parent rights are explained.
- ❑ If the student is eligible for 504 protections, the Section 504 Accommodation Plan is developed at the meeting. Implementation begins immediately.
- ❑ The 504 Accommodation Plan is reviewed annually *; a notice of the meeting is sent to parents. Notes of the meeting are kept; the parent may have a copy if requested. A new 504 Accommodation Plan is developed. A copy of the parent rights is given to the parent.
- ❑ At least every three years, or whenever a change in placement is considered, a reevaluation is conducted. The parent is notified of this reevaluation, and a meeting is held to discuss results.
- ❑ The 504 Accommodation Plan is kept in the Student Cumulative folder *. A copy is placed in the 504 file, with all other 504 documentation. A copy of the 504 Accommodation Plan is sent to District 504 Coordinator.

APPENDIX J

REFERRAL FOR 504 ASSISTANCE

Section 504 of the Rehabilitation Act of 1973 is designed to eliminate discrimination on the basis of disability in any program or activity receiving Federal financial assistance. Students eligible for 504 assistance are those who 1) have a physical or mental impairment which substantially limits one or more major life activities, 2) have a record of such impairment or 3) are regarded as having such an impairment. If you feel the student identified may qualify for civil rights protection under Section 504, please complete the following information.

Student's Name _____ Grade _____ Date _____

School _____ Birthdate _____ Sex ❑ M ❑ F

Parent(s) _____ Home Phone _____ Work Phone _____

Name of Person Submitting Referral _____ Position _____

Describe the student's need or area of concern: _____

_____

_____

_____

Special Education (IDEA-B) Status: (***check one box only***)

- ❑ The student will be referred for special education evaluation.
- ❑ No referral to special education is necessary. No evidence exists to indicate the presence of a disability as defined by IDEA.
- ❑ The student has been evaluated by the special education team and does not qualify for special education services.
- ❑ The student has received special education services in the past, but no longer requires special education. Please check services provided:
  - ❑ Resource Class ❑ Self-contained Class ❑ Occupational Therapy
  - ❑ Guidance ❑ Special School Setting ❑ Physical Therapy
  - ❑ Speech-Language ❑ Other _____

Section 504:

The student is suspected of having a physical or mental impairment, has a record of such impairment or is regarded as having such impairment, which may substantially limit one or more of the following major life activities:

- ❑ caring for one's self ❑ speaking ❑ breathing ❑ other _____
- ❑ performing manual tasks ❑ seeing ❑ learning _____
- ❑ walking ❑ hearing ❑ working _____

Action Taken:

- ❑ The student will be evaluated for possible 504 accommodation. Evaluation Assignments:

  _____

  _____

  _____

- ❑ No further evaluation at this time. Explain.

  _____

  _____

Additional Comments: _____

_____

_____ _____

Principal's Signature Date

cc: Educational Record

SECTION 504
NOTICE OF CONFERENCE

Date:_____

Dear _____,

Student:_____ Date:_____

Location:_____ Time:_____

A. The purpose of this meeting: *(check all that apply)*

_____ Discuss results of evaluation/ Section 504 eligibility

_____ Review instructional progress

_____ Review of accommodation plan

_____ Review of placement

_____ Discuss results of re-evaluation

_____ Discuss misconduct/infraction of school rules as it relates to disability

_____ Other (specify)_____

The following records/data will be discussed:_____

_____

B. The following people will be included in the meeting: (write in names as appropriate)

1. School Principal_____
2. Guidance Counselor_____
3. Evaluation Specialist(s)_____
4. Other Specialist(s)_____
5. General Education Teacher(s)_____
6. School Nurse_____
7. Parent(s)_____
8. Student_____
9. Other(specify)_____

c: Parents
Cumulative Folder

SECTION 504
NOTICE OF CONFERENCE
(CONTINUED)

Please complete this page and return to your child's school as soon as possible to let us know about your attendance at the meeting.

Date:_____

To:_____

1. __ I will attend the scheduled Section 504 Conference Committee meeting.
   __ I will not attend the Section 504 Conference Committee meeting, but I would like you to continue the process and send the paperwork to my home address.

2. __ I would like my child to attend the Section 504 Conference Committee meeting.
   __ I do not want my child to attend the Section 504 Conference Committee meeting.

3. Please indicate if there are additional school personnel you would like to attend the Conference Committee Meeting.

   _____

4. You may also bring any additional persons to the Section 504 Conference Committee meeting.

   I plan to have the following person attend with me: _____

   Parent/Guardian Signature:_____ Date:_____

cc: Parents
Cumulative Folder

APPENDIX L

504 Eligibility Determination

Student's Name: _____ **Grade:** _____ **Date:** _____

School: _____ **Birthdate:** _____ **Parent(s):** _____

School Contact Person: _____ **Position:** _____

Eligibility Team Members: (fill in names and check whether knowledgeable about the...)

	child	meaning of evaluation data	accommodations/ placement options
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Variety of sources of evaluation information: (indicate each one used)

_____ achievement tests
_____ adaptive behavior
_____ medical report
_____ other (specify): _____

_____ teacher recommendations/observations
_____ student work samples
_____ cognitive assessments

1. Specify the mental or physical impairment: _____

2. Check the major life activity that is affected by the impairment:
   - ❑ seeing
   - ❑ hearing
   - ❑ caring for one's self
   - ❑ breathing
   - ❑ walking
   - ❑ learning
   - ❑ performing manual tasks
   - ❑ working
   - ❑ other (specify): _____

3. The term "substantially limits" means that the student is:
   a) unable to perform a major life activity that the average student of approximately the same age can perform

   OR

   b) significantly restricted as to the condition, manner or duration under which a particular life activity is performed as compared to the average student of approximately the same age. The impairment must be substantial and somewhat unique, rather than commonplace, when compared to the average student of approximately the same age.

Place an "X" on the following scale to indicate the specific degree that the impairment (in #1) limits the major life activity (in #2): For an "X" at "4" or above, fill in specific information evaluated by the team that justifies the rating:

5	Extremely	_____
4	Substantially	_____
3	Moderately	_____
2	Mildly	_____
1	Negligibly	_____

❑ The team's determination was less than "4"; the student is not eligible for Section 504 protections. Provide notice to parents of their procedural rights, including an impartial hearing.

OR

❑ The team's determination was a "4" or above. The team should determine and list on the 504 Accommodation Plan the specific accommodations that are necessary for the student to have an opportunity commensurate with non-disabled students of approximately the same age in this district.

c: Student's Cumulative Folder
District 504 Coordinator
Parent

SECTION 504 ACCOMMODATION PLAN

Student Name_____ Birthdate_____ Grade_____

School_____ Initial Referral Date_____ Reevaluation Due_____

Beginning Date of this Plan _____ Annual Review Date _____

Describe how the identified disability substantially limits a major life activity:_____

Accommodation/Action to Be Taken	Person(s) Responsible

page 2 attached ❑

Participation in KIRIS assessment:
❑ no modifications
❑ modifications as defined in accommodations

Team Signatures	Position	Date
_____	School 504 Team Chairperson	_____
_____	Parent/Guardian	_____
_____	Teacher	_____
_____	Other(s)	_____

cc: Student's Cumulative Folder
District 504 Coordinator
Parent

INFORMATION REGARDING SECTION 504 OF THE REHABILITATION ACT OF 1973

Section 504 is an Act which prohibits discrimination against individuals with a disability in any program receiving Federal financial assistance. The Act defines a person with a disability as anyone who:

1. has a mental or physical impairment which substantially limits one or more major life activities (major life activities include activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working);

2. has a record of such an impairment; or

3. is regarded as having such an impairment.

In order to fulfill its obligation under Section 504, the _____ school district recognizes a responsibility to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person solely due to his/her disability will knowingly be permitted in any of the programs and practices in the school system.

The school district has specific responsibilities under the Act, which include the responsibility to identify, evaluate, and if the child is determined to be eligible under Section 504, to afford access to appropriate educational services.

If the parent or guardian disagrees with the determination made by the professional staff of the school district, he/she has a right to a hearing with an impartial hearing officer.

The Family Educational Rights and Privacy Act (FERPA) also specifies rights related to educational records. This Act gives the parent or guardian the right to: 1) Inspect and review his/her child's educational records; 2) make copies of these records; 3) receive a list of all individuals having access to those records; 4) ask for an explanation of any item in the records; 5) ask for an amendment to any report on the grounds that it is inaccurate, misleading, or violates the child's rights; and 6) a hearing on the issue if the school refuses to make the amendment.

If there are questions, please feel free to contact _____, Section 504 coordinator for the school district, at phone number_____.

APPENDIX N

OFFICE FOR CIVIL RIGHTS REGIONAL LOCATIONS

Regional Office	Phone Number	Areas Served
Boston	(617) 223-9662 TDD (617) 223-9695	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
New York	(212) 637-6466 TDD (212) 637-6466	New Jersey, New York, Puerto Rico, Virgin Islands
Philadelphia	(215) 596-6787 TDD (215) 596-6794	Delaware, Kentucky, Maryland, Pennsylvania, West Virginia
Atlanta	(404) 562-6350 TDD (404) 562-6454	Alabama, Florida, Georgia, South Carolina, Tennessee
Dallas	(214) 880-2459 TDD (214) 880-2456	Arkansas, Louisiana, Mississippi, Oklahoma, Texas
Washington, D.C.	(202) 208-2545 TDD (202) 208-7741	North Carolina, Virginia, Washington, D.C.
Chicago	(312) 886-8434 TDD (312) 353-2540	Illinois, Indiana, Michigan, Minnesota, Wisconsin
Cleveland	(216) 522-4970 TDD (216) 522-4944	Michigan, Ohio
Kansas City, MO	(816) 880-4200 TDD (816) 891-0582	Iowa, Kansas, Missouri, Nebraska, North Dakota, South Dakota
Denver	(303) 844-5695 TDD (303) 844-3417	Arizona, Colorado, New Mexico, Montana, Utah, Wyoming
San Francisco	(415) 437-7770 TDD (415) 437-7786	California
Seattle	(206) 442-6811 TDD (206) 220-7880	Alaska, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, Trust Territory of the Pacific Islands

APPENDIX O

CONTACTS/RESOURCES

CASE Office
Jo Thomason, Executive Director
615 16th Street, N.W.
Albuquerque, NM 87104
(800) 585-1753
Fax: (505) 247-4822
Email: casecec@aol.com

Arizona Department of Education
1535 West Jefferson
Phoenix, AZ 85007
(602) 542-5440

Oregon Department of Education
255 Capitol Street, N.E.
Salem, OR 97310-0203
(503) 378-3573

Warren County Public Schools
303 Lovers Lane
Bowling Green, KY 42103
(270) 781-5150

West Lake Special Education Coop
212 E. Joliet Blvd.
Schererville, IN 46375

Intermediate School District
Washtenaw County, Michigan

Wayne County Regional Educational
Service Agency
Michigan

C. Arthur Cernosia, Esq.
Atty./Ed. Consultant
114 East Hill Road
Williston, VT 05495
(802) 658-5036

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